

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

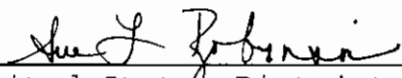
RONALD J. SMITH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 05-119-SLR
	)	
E.I. DU PONT DE NEMOURS AND	)	
COMPANY,	)	
	)	
Defendant.	)	

O R D E R

At Wilmington this 22<sup>nd</sup> day of September, 2006, having reviewed defendant's motion for attorney's fees pursuant to 29 U.S.C. § 1132(g)(1) and plaintiff's response thereto;

IT IS ORDERED that said motion (D.I. 15) is denied. Section 1132(g)(1) provides, in relevant part, that "the court, **in its discretion**, may allow a reasonable attorney's fee and costs of action to either party." (Emphasis added) I decline to exercise my discretion to award fees and costs to defendant, on the grounds that plaintiff's complaint was not filed frivolously; indeed, judgment was entered in favor of defendant only after the Third Circuit issued its dispositive decision in McGowan v. NJR Service Corp., 423 F.3d 241 (3d Cir. 2005), in which the Third

Circuit adopted a minority view on the issue in dispute.

  
United States District Judge